

**IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

**FLOYD JOSE BORDEN
AKA FLOYD J. BORDER
VONTONYA JENEE BORDEN
AKA VONTONYA J. WILLIAMSON**

**SSN: xxx-xx-1691
SSN: xxx-xx-7849**

DEBTORS

CASE NO. 09-81814

MOTION FOR RELIEF FROM STAY

APPLYING 11 U.S.C. § 362(e)

Pursuant to Section 362(d) of Title 11 of the United States Bankruptcy Code, as amended (the "Bankruptcy Code") and Bankruptcy Rules 4001 and 9014, M&T CREDIT SERVICES, LLC (MTCS), through counsel, hereby moves the Court for an Order for relief from the automatic stay provisions of 11 U.S.C. §362(a).

In support of its Motion, MTCS shows unto the Court that:

1. On or about October 15, 2009, the Debtors filed a petition with the United States Bankruptcy Court for the Middle District of North Carolina for relief under Chapter 7 of the United States Bankruptcy Code.

2. This Court has jurisdiction over the Motion pursuant to the provisions of 11 U.S.C. §362 and Bankruptcy Rules 4001 and 9014. This Court has jurisdiction over this proceeding, pursuant to 28 U.S.C. §1334, the Referral Order entered herein by the Chief United States District Court Judge for the Middle District of North Carolina and 11 U.S.C. §362. Bankruptcy Rules 4001 and 9014 apply. This matter is a core proceeding as defined in 28 U.S.C. §151 and 157(b) and to the extent any non-core issues are raised, MTCS consents to the jurisdiction of this Court for determination of all issues, including non-core issues.

3. Sara A. Conti is the duly appointed Trustee in the Debtors' Chapter 7 proceeding.

4. On or about September 25, 2009, Floyd J. Borden executed a Personal Loan Note and Security Agreement ("Note") in the original principal amount of \$32,050.77, a copy of which is attached hereto and incorporated herein by reference.

5. The Note referred to in the preceding paragraph is secured by a North Carolina Certificate of Title Number 770498082908909 on property known as a 2006 Kia Sedona bearing Vehicle Identification Number KNDMB233566053649. A copy of the Certificate of Title is attached hereto and incorporated by reference.

6. At the time of filing herein, the Debtors were in default on their obligations to MTCS.

7. MTCS is a secured creditor in the Debtors' bankruptcy proceeding. Pursuant to the Debtors' Chapter 7 petition, the Debtors intend to surrender the subject property. The total contractual arrearage due under the Note through November 15, 2009, is at least \$1,986.56. A breakdown of the arrearage is as follows:

Payment(s)	08/09 - 11/09	\$496.64 x 4 =	\$1,986.56
TOTAL ARREARAGE THROUGH November 15, 2009			<u>\$1,986.56</u>

8. As of the filing of this Motion, the approximate unpaid principal balance on the above described debt to Movant was \$29,393.48 plus interest accruing at the rate of 7.99%, accumulated late charges and fees. The amount necessary to pay the loan in full is in excess of \$30,411.10.

9. A fair market value, based on the Debtors' Petition is \$8,212.00.

10. A total fair market value for collateral in excellent condition, based on Kelley Blue Book, is \$13,245.00.

11. The Trustee's Report of No Distribution was filed on November 6, 2009.

12. Movant is not adequately protected and the Debtors have not offered adequate protection.

13. Movant is entitled to Relief from Stay to foreclose or repossess its security interest in the property identified in the Personal Loan Note and Security Agreement and in the Certificate of Title attached hereto and incorporated herein by reference and to pursue all other state remedies for sums due under the loan documents.

14. Movant will suffer irreparable injury, loss and damage in the event relief is not granted.

15. Movant has incurred reasonable attorney's fees and costs in connection with the prosecution of this motion.

BASED UPON THE FOREGOING, Movant respectfully prays that:

1. The stay imposed by 11 U.S.C. §362(a) be terminated, annulled or modified to permit Movant to foreclose or repossess its security interest in the property identified in the Personal Loan Note and Security Agreement and in the Certificate of Title attached hereto and to pursue all other state remedies for sums due under the loan documents; that said relief is immediate, and the 10 day waiting period of F.R.B.P. 4001(a)(3) does not apply; or in the alternative that it receive adequate protection from the Debtors;

2. The hearing of this motion be the final hearing under 11 U.S.C. §362(c) and any preliminary hearing be consolidated herein and Orders entered accordingly;

3. It be granted reasonable attorney's fees pursuant to 11 U.S.C. §506; and,

4. It have such other and further relief as the Court deems just and proper.

This the 9th day of November, 2009.

THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.

BY: s:/Joseph J. Vonnegut

Joseph J. Vonnegut
Attorney for Movant
4317 Ramsey Street
Post Office Box 2505
Fayetteville, NC 28302
(910) 864-2668
State Bar No. 32974

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. THE PURPOSE OF THIS COMMUNICATION IS TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date this paper was served upon the following parties by depositing a copy enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service or via the appropriate electronic servicer:

Debtors:

Floyd Jose Borden
4 Green Springs Court
Durham, NC 27713

Vontonya Jeneé Borden
4 Green Springs Court
Durham, NC 27713

Attorney for Debtors:

John T. Orcutt
6616-203 Six Forks Rd.
Raleigh, NC 27615

Sara A. Conti
Chapter 7 Trustee
P.O. Box 939
Carrboro, NC 27510

Michael D. West
Bankruptcy Administrator
P.O. Box 1828
Greensboro, NC 27402

This the 9th day of November, 2009.

THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.

BY: s/Joseph J. Vonnegut
JOSEPH J. VONNEGUT
Attorney for Movant
4317 Ramsey Street
Post Office Box 2505
Fayetteville, NC 28302
(910) 864-2668
State Bar No. 32974

White - Bank
Cafery - Borrower 1
Pink - Borrower 2
Green - Guarantor



PERSONAL LOAN NOTE AND SECURITY AGREEMENT

Part I

2001

Interest Rate

For Internal Use Only

Part II

SEPT 25 2008
Date

FLOYD BORDEN 200 COURTNEY CREEK BLVD APT 228 DURHAM NC 27713

Borrower 1's name and address

Borrower 2's name and address

Guarantor's or other owner's name and address

1. Meaning of some words. In this note, (a) "you" and "your" mean anyone signing this note, whether as a borrower, guarantor or other owner. (b) "we," "us," "our" and "ours" mean Manufacturers and Traders Trust Company, One Met Plaza, Buffalo, New York 14240, and (c) "your property" means any motor vehicle, boat, mobile home or other item of tangible personal property described on any line in Section 7, including all equipment, accessories, parts and tires that are or become part of it by being installed in or affixed to it.

2. Introduction. This note consists of 2 parts, each of which contains provisions concerning the credit transaction in which you are giving us this note. Part I of this note contains Sections 1 through 16 of this note, and Part II of this note contains sections 17 through 49 of this note.

3. Summary of credit transaction.

a. ANNUAL PERCENTAGE RATE 7.99%
b. Amount financed 23,050.77
c. FINANCE CHARGE 7,068.62
d. Total of payments 30,119.39

In this note, (a) "annual percentage rate" means the cost, expressed as a yearly rate, of the credit being provided to you or on your behalf in the credit transaction in which you are giving us this note, (b) "amount financed" means the amount of the credit, (c) "finance charge" means the cost, in dollars, of the credit, and (d) "total of payments" means the amount you will pay by paying all installments payable under this note as scheduled.

4. Payment schedule. You are to pay 25 monthly installments under this note, beginning on NOV 01 2008. Each of the installments will be \$ 1,204.77 (or, if the following blanks are completed, each of the first of the installments will be \$ and the last of the installments will be \$).

5. Other charges. (a) If any portion of any installment payable under this note is overdue for more than 10 days, you must pay a late charge of 5% of the installment but not more than \$5. (b) If any check you give us as a payment on your account is dishonored because of insufficient or uncollected funds or because the account has been closed, you must pay a returned check charge as permitted by General Obligations law section 5-328 as the same may be amended from time to time. As of September 1998, that fee is \$20.00.

6. Prepayment. If you prepay all amounts payable under this note, you will not have to pay a penalty and may be entitled to a refund of part of the finance charge.

7. Security. We are being given an interest in the following property:

☒ Motor vehicle, boat, mobile home or other tangible property described as follows:
2006 KIA SEDONA

Year make model
KNDNB233566053649
Identification number

Type of property
☐ Other property described as follows (describe, if applicable, boat engine and boat trailer and include account number for deposit account):

Also, money on deposit with us and other property securing the payment of other amounts payable to us may secure the payment of all amounts payable under this note.

8. Assumption. If proceeds of the credit transaction in connection with which you are giving us this note are to be used to finance the purchase of a mobile home described on any line in Section 7, someone buying the mobile home may under certain circumstances be allowed to assume the obligation to pay amounts payable under this note in accordance with the provisions of this note.

9. Effect of deposit account. If a deposit account is described on any line in Section 7, the annual percentage rate does not reflect the effect of the deposit account.

10. Additional information. You should refer to the rest of this note for additional information about nonpayment, default, our right to declare all amounts payable under this note but not yet paid immediately due and prepayment refunds.

Guarantor's signature

Other owner's signature

☐ The following notice applies only if this box is checked:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

CO-SIGNER NOTICE
(Closed-end Credit)

(Co-signer's Name)

(Co-signer's Address)

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. You should know that the Total of Payments listed below does not include finance charges resulting from delinquency, late charges, repossession or foreclosure costs, court costs or attorney's fees, or other charges that may be stated in the note or contract. You will also have to pay some or all of these costs and charges if the note or contract, the payment of which you are guaranteeing, requires the borrower to pay such costs and charges.

This notice is not the note, contract, or other writing that obligates you to pay the debt. Read that writing for the exact terms of your obligation.

IDENTIFICATION OF DEBT(S) YOU MAY HAVE TO PAY

MANUFACTURERS AND TRADERS TRUST COMPANY

(Name of Debtor)

(Name of Creditor)

(Date)

(Kind of Debt)

(Total of Payments)

I have been given a completed copy of this notice and each writing that obligates me or the Debtor on this debt.

(Date)

(Signature)

11-059 (7/04)

STATE OF NORTH CAROLINA

MVR-191 (Rev 05/07)

CERTIFICATE OF TITLE

100-50435012007

VEHICLE IDENTIFICATION NUMBER

KNDMB233566053649

TITLE NUMBER

770498082908909

YEAR MODEL

2006

MAKE

KIA

TITLE ISSUE DATE

10/18/2008

BODY STYLE

VN

PREVIOUS TITLE NUMBER

777906072967909

MAIL TO

M & T BANK

PO BOX 17292

BALTIMORE MD 21297-0200

OCT 22 2008

ODOMETER READING

031079

ODOMETER STATUS

TITLE BRANDS

OWNER(S) NAME AND ADDRESS

FLOYD JOSE BORDEN

200 COURTNEY CREEK BLVD APT 228

DURHAM NC 27713-1324



The Commissioner of Motor Vehicles of the State of North Carolina hereby certifies that an application for a certificate of title for the herein described vehicle has been filed pursuant to the General Statutes of North Carolina and based on that application, the Division of Motor Vehicles is satisfied that the applicant is the lawful owner. Official records of the Division of Motor Vehicles reflect vehicle is subject to the liens, if any, herein enumerated at the date of issuance of this certificate.

As WITNESS, his hand and seal of this Division of the day and year appearing in this certificate as the title issue date.

COMMISSIONER OF MOTOR VEHICLES

FIRST LIENHOLDER:

M & T BANK

PO BOX 17292

BALTIMORE MD 21297-0200

DATE OF LIEN 09/25/2008

LIEN RELEASED BY

SIGNATURE

TITLE

DATE

SECOND LIENHOLDER:

DATE OF LIEN

LIEN RELEASED BY

SIGNATURE

TITLE

DATE

THIRD LIENHOLDER:

DATE OF LIEN

LIEN RELEASED BY

SIGNATURE

TITLE

DATE

FOURTH LIENHOLDER:

DATE OF LIEN

LIEN RELEASED BY

SIGNATURE

TITLE

DATE

ADDITIONAL LIENS:

79121892

909 TIMOBFH



Kelley Blue Book
THE TRUSTED RESOURCE
kbb.com

advertisement

2006 Kia Sedona LX Minivan

BLUE BOOK® SUGGESTED RETAIL VALUE

advertisement

**Condition****Value****Excellent****\$13,245**

(Selected)

Suggested Retail Value
Assumes Excellent
Condition... [More](#)

Vehicle Highlights

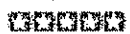
Mileage: 36,000
Engine: V6 3.8 Liter
Transmission: Automatic
Drivetrain: FWD

Selected Equipment**Standard**

Air Conditioning	Tilt Wheel	Front Side Air Bags
Rear Air	Cruise Control	ABS (4-Wheel)
Power Steering	AM/FM Stereo	Privacy Glass
Power Windows	Single Compact Disc	Stability Control
Power Door Locks	Dual Front Air Bags	Traction Control

Blue Book Suggested Retail Value

Kelley Blue Book Suggested Retail Value is representative of dealers' asking prices for a used car, and the starting point for negotiation between a consumer and a dealer. This Suggested Retail Value assumes that the vehicle has been fully reconditioned and has a clean title history, but has not been certified in accordance with any Certified Pre-Owned (CPO) program the automaker may offer (for which it may or may not qualify, according to factors such as vehicle age and mileage). This value also takes into account the dealers' profit, costs for advertising, sales commissions and other costs of doing business. The final sale price will likely be less depending on the vehicle's actual condition, popularity, type of warranty offered and local market conditions.

Vehicle Condition Ratings**Excellent** (Selected)**\$13,245**

- Looks new, is in excellent mechanical condition and needs no reconditioning.
- Never had any paint or body work and is free of rust.
- Clean title history and will pass a smog and safety inspection.
- Engine compartment is clean, with no fluid leaks and is free of any wear or visible defects.
- Complete and verifiable service records.

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